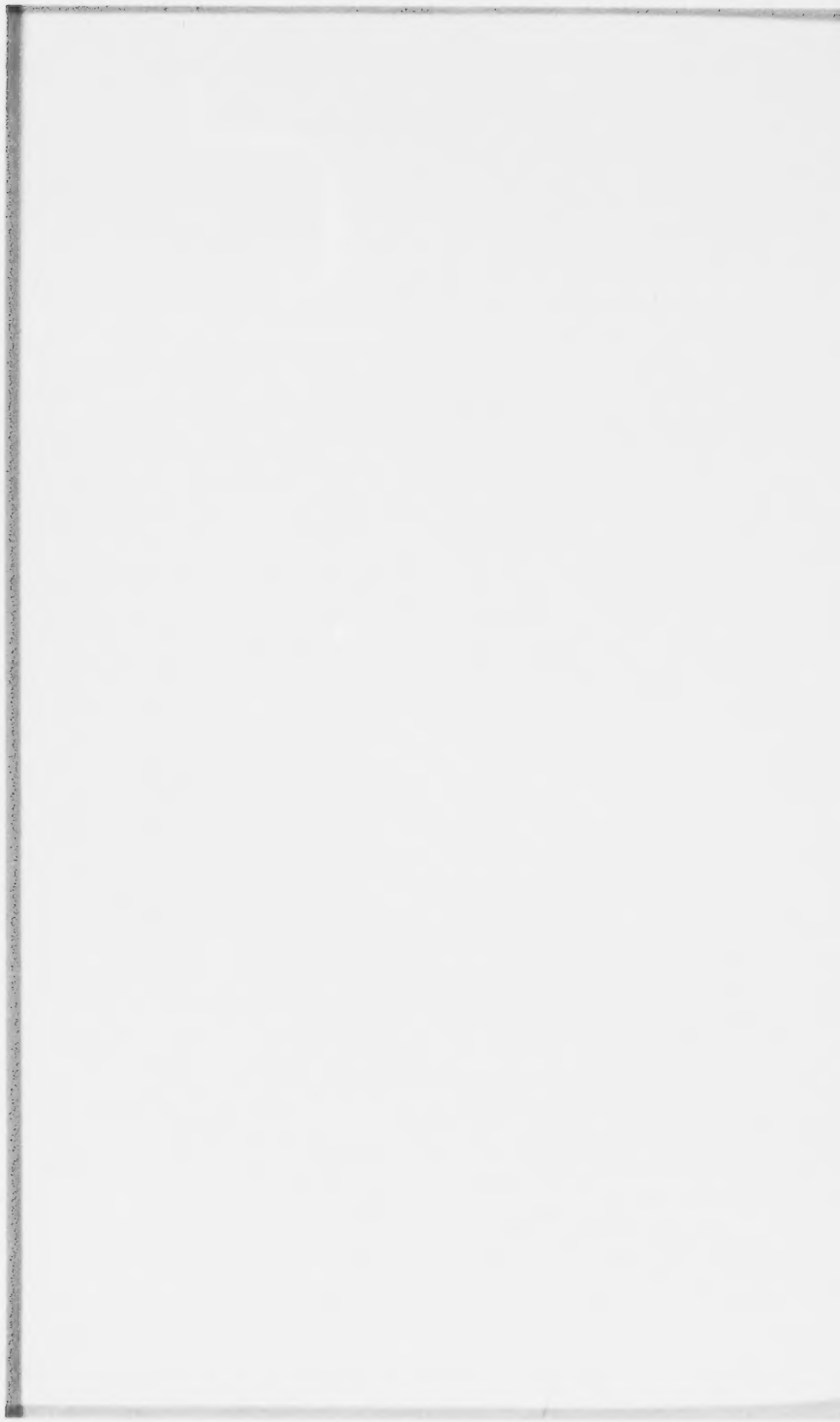

APPENDIX

Appendix

August 6, 1936

Respectfully returned to His Excellency, the President of the Philippines, with the following comment:

At the very outset, it might be well to recall that there is an administration bill on the subject of inheritance taxation which has been recommended for passage by the National Assembly. That bill, copy of which is hereto attached, revises the schedule of inheritances subject to tax in such a way that the present rates of tax, which range from 1 per cent upon the first ₱10,000 to 16 per cent upon the amount by which the share of inheritance exceeds ₱15,000,000 as the maximum amount, shall be levied upon lesser amounts of inheritance which are so graduated that the maximum rate of 16 per cent shall be applied to shares of the inheritance exceeding ₱2,000,000 only as the maximum amount. It is, however, to be noted that the schedule of inheritances subject to tax as proposed in this administration bill is the same as that provided for in the present law except in respect to shares of inheritance exceeding ₱150,000. In other words, the present rates of tax for shares of inheritance not exceeding ₱150,000 will remain as they are.

In the attached Bill No. 1337, it will be noted that while there is no change in respect to shares of inheritance not exceeding ₱30,000, the rate of 3 per cent is applied to such shares exceeding ₱30,000 but not exceeding ₱50,000; 4 per cent to shares exceeding ₱50,000 but not exceeding ₱80,000; 5 per cent to shares exceeding ₱80,000 but not exceeding ₱110,000; and 6 per cent to shares exceeding ₱110,000 but not exceeding ₱150,000. In other words, Bill No. 1337 modifies the present schedule of rates applicable to shares of inheritance not exceeding ₱150,000. Moreover, the bill would raise the maximum rate of tax on shares of inheritance exceeding ₱2,000,000 from 16 per

cent as proposed in the administration bill to 20 per cent. For a better appreciation of the differences between the schedule of tax rates as proposed in the administration bill and that proposed in the bill under comment (Bill No. 1337), there is reproduced hereunder a comparative table of the tax rates in question:

Under Bill No. 1337			Under administration bill		
Exceeding	Not Exceeding	Rate	Exceeding	Not Exceeding	Rate
Pesos	*Pesos*	*Per cent*	*Pesos*	*Pesos*	*Per cent*
	10,000	1		10,000	1
10,000	30,000	2	10,000	30,000	2
30,000	50,000	3	30,000	50,000	3
50,000	80,000	4	60,000	100,000	4
80,000	110,000	5	100,000	150,000	5
110,000	150,000	6	150,000	200,000	6
150,000	190,000	7	200,000	250,000	7
190,000	240,000	8	250,000	300,000	8
240,000	290,000	9	300,000	350,000	9
290,000	350,000	10	350,000	400,000	10
350,000	420,000	11	400,000	500,000	11
420,000	500,000	12	500,000	700,000	12
500,000	600,000	13	700,000	1,000,000	13
600,000	720,000	14	1,000,000	1,500,000	14
720,000	850,000	15	1,500,000	2,000,000	15
850,000	1,000,000	16	2,000,000		16
1,000,000	1,200,000	17			
1,200,000	1,500,000	18			
1,500,000	2,000,000	19			
2,000,000		20			

It is believed that the rates of tax proposed in the bill under comment are, in the main, exceedingly high, for which reason it is respectfully recommended that the schedule of rates imposed in the administration bill be adopted. At this juncture, attention may be invited to the fact that the rates of tax under discussion constitute only the basic rates applicable to the first class of heirs, namely, the surviving spouse, the legitimate, recognized natural, or adopted child, or legitimate descendant. The second class of heirs consisting of the legitimate parents of the deceased, the legitimate brother or sister of the same, the father or mother who had recognized him as a natural child or any descendant not included in the first class of heirs are required to pay the basic rates with an increase of 100 *per centum*, while other relatives not in-

cluded in the said classes of heirs are required to pay the basic rates with an increase of 200 *per centum*. Finally, strangers who constitute the fourth class of heirs are required to pay the same basic rates of tax with an increase of 300 *per centum*. Consequently under Bill No. 1337, the maximum rate of tax applicable to shares of inheritance corresponding to strangers would be 80 *per centum*. Evidently, this rate of tax is virtually confiscatory.

Section 1 of the bill under comment carries a new paragraph, denominated as paragraph E, wherein it is provided that in addition to the tax provided for in the same section there shall be collected an additional tax of 5 *per centum* on the total net inventoried property left by the decedent if the value thereof is not less than ₱500,000, irrespective of the relation of the beneficiaries to the deceased. This Department objects to the adoption of this new paragraph, for the reason that paragraph (*a*) already provides for the imposition of a progressive inheritance tax, the rates of which vary according to the values of the shares of inheritance involved.

In respect to the other provisions of the bill not to be found in the administration bill, this Department has no objection to offer, as they tend to clarify some of the controversial provisions of the present law.

(Sgd.) A. DE LAS ALAS
Secretary

November 19, 1932

Respectfully returned to the Collector of Internal Revenue, Manila.

Opinion is requested as to "whether or not the estate of the late Robert Henry Wood should pay inheritance tax on shares of stock owned by him at the time of his death in different domestic corporations."

It appears that the deceased Robert Henry Wood was at the time of his death a resident of London, England,

and that, at that time, and for several years prior thereto, he owned a number of shares of stock in Smith, Bell & Co., Ltd., a corporation organized in accordance with the laws of the Philippine Islands. On October 14, 1919, said Robert Henry Wood and other stockholders of the aforesaid company—who are hereinafter referred to as the Partners—executed a deed of trust, whereby they agreed to forthwith transfer their respective shares of stock to two residents of the Philippine Islands, who would be the trustees thereof, and whose duties, among others, would be:

> (*a*) To pay the dividends received by them on the preference shares to the Partners, in the proportion stated in the deed of trust;
>
> (*b*) To apply the dividends received by them on the ordinary shares in the purchase at par, on behalf of the Managers of the Company, or an equivalent amount of the preference shares transferred to said trustees in the aforesaid manner, and to pay the amounts so applied to the purchase of preference shares to the Partners, in the proportion above-referred to;
>
> (*c*) To hold the preference shares so purchased on behalf of the Managers of the company, who would thereafter be entitled to receive the dividends payable thereon, but could have no voting rights, with respect to said shares, until all the preference shares had been so purchased, which voting rights would, in the meantime, be exercised by the Trustees as the Partners or their respective representatives may direct.

The deed of trust also provided that:

> "10. If and so soon as the whole of the preference shares shall have been paid off, the whole of the ordinary shares and also any moneys including any interest or income on any such deposits or investments as aforesaid remaining in the hands of the Trustees shall be distributed among the then Managers in proportion to their then interests in the profits."

It is apparent that the shares of stock in question fall under section 1536 of the Revised Administrative Code, the pertinent portion of which reads as follows:

> "SEC. 1536. *Conditions and rate of taxation.*—Every transmission by virtue of inheritance, devise, bequest, gift *mortis causa* or advance in anticipation of inheritance, devise, or bequest of real property located in the Philippine Islands and real rights in such property; of any franchise which must be exercised in the Philippine Islands; *of any shares, obligations, or bonds issued by any corporation* or *sociedad anónima organized or constituted in the Philippine Islands in accordance with its law;* of any shares or rights in any partnership, business, or industry established in the Philippine Islands, or of any personal property located in the Philippine Islands shall be subject to the following tax:"

But, some doubts seem to have been entertained as to whether said provision could be validly applied to said shares of stock, in view of the decisions in First National Bank of Boston *v.* State of Maine (promulgated on January 4, 1932), Farmers Loan and Trust Co. *v.* Minnesota (280 U. S. 211, 74 L. ed. 374), and Baldwin *v.* Missouri (281 U. S. 586), in which cases the Supreme Court of the United States applied the rule of *mobilia sequuntur personam* and held that a state could not tax the transfer by death of intangible property of a nonresident.

In the first case, the Court, however, had the following to say:

> "*We do not overlook the possibility that shares of stock,* as well as other intangibles, *may be so used in a state other than that of the owner's domicile as to give them a situs analogous to the actual situs of tangible personal property.* See Farmers Loan Company case, *supra,* at p. 215. That question heretofore has been reserved, and it still is reserved to be disposed of when, if ever, it properly shall be presented for our consider-

ation." (First National Bank of Boston *vs.* State of Maine, January 4, 1932, No. 171—October term, 1931, Advanced Decisions of the Supreme Court of the United States.)

In the second case the property in question consisted of negotiable bonds and certificates of indebtedness issued by the State of Minnesota and the cities of Minneapolis and St. Paul, *kept by its deceased owner in New York*, the State of his domicile, and *having no connection whatsoever with business carried on by or for the decedent in Minnesota*. The Court said:

"* * * no state may tax anything not within her jurisdiction without violating the Fourteenth Amendment. * * * Also no state can tax the testamentary transfer of property *wholly* beyond her power (Rhode Island Trust Co. *vs.* Doughton, 270 U. S. 69), or impose death duties reckoned upon the value of tangible *permanently* located outside her limits.

"* * * * * * *

"* * * choses in action may acquire a situs for taxation other than at the domicile of their owner *if they have become integral parts of some legal business.*

"* * * * * * *

"*The bonds and certificates of the decedent had acquired permanent situs for taxation in New York;* their testamentary transfer was properly taxable there but not in Minnesota." (Farmers Loan and Trust Co. *vs.* Minnesota, 280 U. S., 204, 210, 213.)

And the property sought to be taxed in the third case consisted of credits for cash deposited with several banks located in the State of Missouri and certain coupon bonds issued by the United States and sundry promissory notes which were then physically within that State. Its owner died, however, while a resident of Illinois and *it did not appear that she ever resided in Missouri or that said property had been given a business situs in the latter State.* An

inheritance tax was demanded upon said property under a Missouri law, but the Court said:

> "*Ordinarily*, bank deposits are mere credits and for purposes of ad valorem taxation have situs at the domicile of the creditor only. The same general rule applies to negotiable bonds and notes whether secured by liens and real estate or otherwise.
>
> "* * * * * * *
>
> "The bonds and notes, although physically within Missouri under our former opinions were choses in action with situs at the domicile of the creditor. At that point they too passed from the dead to the living, and there this transfer was actually taxed. As they were not within Missouri, for taxation purposes the transfer was not subject to her power. Rhode Island Trust Co. v. Doughton, 270 U. S. 69." (Baldwin *vs.* Missouri, 281 U. S. 586, 391, 393.)

In short, the property in question in said three cases were found to have *no business situs outside the State of the domicile of its owner*. Moreover, an inheritance tax had been paid in that State for the transfer of the aforesaid property, and the right of another State to tax the same transfer was denied on the ground of double taxation.

But, it does not appear that an inheritance tax has been paid in England upon the shares of stock of the late Robert Henry Wood in Smith, Bell & Co., Ltd. And it appears that said shares of stock were kept in the Philippine Islands, under the immediate and direct control of the Trustees, who were, and still are, residents of said Islands. In view of the provisions of clause (7) of the deed of trust, said shares of stock were transferred to the name of the Trustees, who, thus, became the holders of the legal title to said property, and the same acquired a business situs in the Philippine Islands. Hence, the rule laid down in the cases above mentioned cannot be applied to the case under consideration.

The decision in Safe Deposit and Trust Co. *vs.* Virginia (280 U. S. 83), is squarely in point. In that case it was held that a fund of stocks and bonds which one Lucius J. Kellam, domiciled and residing in Virginia, had transferred to a Maryland trust company in trust for his two minor sons, was taxable in Maryland, and not in Virginia. Said the court:

> "Manifestly, the securities are subject to taxation in Maryland, where they are in the actual possession of the Trust Company—holder of the legal title. * * *
>
> "* * * * * * * *
>
> "Ordinarily this Court recognizes that the fiction of *mobilia sequuntur personam* may be applied in order to determine the situs of *intangible* personal property for taxation. * * * *But the general rule must yield to established fact of legal ownership, actual presence and control elsewhere, and ought not to be applied if so to do would result in inescapable and patent injustice.* Here, where the possessor of the legal title holds the securities in Maryland, thus giving them a permanent situs for lawful taxation there, and no person in Virginia has present right to their enjoyment or power to remove them, the fiction must be disregarded. It plainly conflicts with fact; the securities did not and could not follow any person domiciled in Virginia. Their actual situs is in Maryland and can not be changed by the *cestui que* trustent.
>
> "* * * * * * * *
>
> "Tangible personal property *permanently* located beyond the owner's domicile may not be taxed at the latter's place * * * Intangible property may acquire a taxable situs where permanently located, employed and protected." (Safe Deposit & T. Co. *vs.* Virginia, 280 U. S. 83, 91, 92.)

In State Board of Assessors *vs.* Comptoir National D'Escompte (191 U. S., 388, 403-404), the same Court under similar circumstances, said:

> "From these cases it may be taken as the settled law of this court that there is no inhibition in the Federal Constitution against the right of the state to tax prop-

erty in the shape of credits where the same are evidenced by notes or obligations held within the State, in the hands of an agent of the owner for the purpose of collection or renewal, with a view to new loans and carrying on such transactions as a *permanent business.*

"The maxim, *mobilia sequuntur personam,* which was applied in the court below as forbidding taxation of the checks in the hands of the agent in New Orleans, has been frequently held to be but a fiction of law, having its origin in considerations of general convenience and public policy, and not to be applied to limit and control the right of the State to tax property within the jurisdiction, it being intended to permit the owner to deal with his personalty according to the law of his domicile, and to make testamentary disposition of it according to the law where he is rather than that of the situs of the property. *It was intended for convenience, and not to be controlling where justice does not demand it.*" (State Board of Assessors *vs.* Comptoir National D'Escompte, 191 U. S., 388, 403-404.)

And, in De Ganay *vs.* Lederer (250 U. S., 376, 381-382), the Court used the following language:

"It is insisted that the maxim *mobilia sequuntur personam* applies in this instance, and that the situs of the property was at the domicile of the owner in France. But this court has frequently declared that the maxim, a fiction at most, must yield to the facts and circumstances of cases which require it; and that notes, bonds and mortgages may acquire a situs at a place other than the domicile of the owner, and be there reached by the taxing authority. It is only necessary to refer to some of the decisions of this court. New Orleans v. Stempel, 175 U. S. 309; Bristol v. Washington County, 177 U. S. 133; Blackstone v. Miller, supra; State Board of Assessors v. Comptoir National D'Escompte, 191 U. S. 388; Carstairs v. Cochran, 193 U. S., 10; Scottish Union & Nations Ins. Co. v. Bowland, 196 U. S. 611; Wheeler v. Sohmer, 233 U. S. 434, 439; Iowa *vs.* Slimmer, 248 U. S., 118, 120. Shares of stock in national banks, this court

> has held, for the purpose of taxation may be separated from the domicile of the owner, and taxed at the place where held. Tappen *vs.* Merchants' National Bank, 19 Wall, 490." (De Ganay *vs.* Lederer, 250 U. S. 376, 382.)

It is, therefore, a well established rule that a State may tax the transfer by death of intangible property of a resident of another State, if said property has acquired a business situs in the former State. And, accordingly, the shares of stock in question are taxable in the Philippine Islands.

Moreover, the maxim *mobilia sequuntur personam* cannot be applied to the case under consideration without holding section 1536 of the Revised Administrative Code unconstitutional in so far as it seeks to tax the transfer of said shares of stock. But the rule is that "every statute is presumed to be constitutional. * * * If there is doubt, the expressed will of the Legislature should be sustained." (Munn *vs.* Illinois, 94 U. S., 123; U. S. *vs.* Grant and Kennedy, 18 Phil. 122, 140).

> "In assailing the constitutionality of a State statute the burden rests upon appellant to establish that it infringes the constitutional guarantee which he invokes. If the state court has not otherwise construed it and it is susceptible of an interpretation which conforms to constitutional requirements, doubts must be resolved in favor of, and not against the state. See Corporation Commission of Oklahoma, etc. v. Lowe, etc., ante, p. 431; South Utah Mines v. Beaver County, 262 U. S., 325, 331." (Toombs v. Citizens Bank, 281 U. S., 643, 647).
>
> "* * *. An infraction of the constitutional provision is not to be assumed. On the contrary, it is to be presumed that the State in enforcing its local policies will conform its requirements to the Federal guarantees. Doubts on this point are to be resolved in favor of, and not against, the State. Grenada County Supervisors v. Brogden, 112 U. S., 261; 269; St. Louis, Southwestern

Railway Company v. Arkansas, 235 U. S. 350, 369; Hendrick v. Maryland 235 U. S. 610, 621; Pullman Co. v. Richardson, 261 U. S. 330; 340; South Utah Mines v. Beaver County, 262 U. S. 325, 331." (Corporation Commission v. Lowe, 281 U. S. 431, 438).

In view of the foregoing, this Office is of the opinion that the shares of stock of the late Robert Henry Woods in Smith Bell & Co., Ltd., are subject to inheritance tax.

DELFIN JARANILLA
Attorney-General